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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,123	12/17/2001	Christopher Peter Olson	16,664	5031

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EXAMINER

LAZOR, MICHELLE A

ART UNIT PAPER NUMBER

1734

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,123

Applicant(s)

OLSON ET AL.

Examiner

Michelle A Lazor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 3, 5, 7, 11 – 14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz (U.S. Patent No. 5779831) in view of Widlund et al. (U.S. Patent No. 6210388).

Regarding Claims 1, 11, and 12, Schmitz discloses a method of making an undergarment having refastenable side seams from a substantially two-dimensional web, the web having two longitudinal sides and a first lateral edge, or two lateral sides and a first longitudinal edge, depending on which is defined as a side or edge, comprising the steps of: transporting the web in a processing direction; cutting the web along a second side or edge to form a two-dimensional pre-form that includes the first and the second lateral edges and the two longitudinal edges; each longitudinal edge having two waist sections and a crotch section located intermediate the waist sections; a sealing or fastening surface located adjacent and inboard on the waist sections; gripping the pre-form adjacent each waist section with a gripping means in four gripping areas, each gripping area being located near a respective refastening surface; jointly rotating at least the gripping means which hold the gripping areas in the region of one of the lateral edges around at least one hinging axis extending substantially parallel to the lateral edges of the pre-form to place

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the first lateral edge generally parallel and opposite to the second lateral edge; superimposing the sealing or fastening surfaces in a securing means, thus forming the undergarment; and releasing the undergarment from the gripping means (column 15, lines 4 – 49); Schmitz also discloses using hook and loop material as mechanical fasteners as an alternative to overlapping seams (column 2, lines 34 – 49), but does not specifically disclose preconditioning the web to include at least four refastening surfaces. However, Widlund et al. disclose preconditioning a web to include hook and loop refastening surfaces before cutting (Figures 1, 2, and 11; column 3, lines 34 – 40; column 4, lines 33 – 40; and column 7, lines 7 – 15). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to precondition the web to include hook and loop refastening surfaces since it is well known in the art to add fasteners to the web before cutting the web into individual diapers.

Regarding Claims 2, 3, 13, and 14, Schmitz discloses the step of forming the web by combining a liquid-impervious backsheet, an absorbent core and a liquid-pervious topsheet, such that the undergarment is an absorbent article (column 15, lines 50 – 54); and wherein the pre-form includes an exterior surface and a body-contacting surface opposite the exterior surface; and the waist sections define a front waist section and a back waist section (Figure 3; column 6, lines 17 – 65).

Regarding Claim 5, Widlund et al. disclose two of the refastening surfaces located on the body-contacting surface of the front waist section and two of the refastening surfaces located on the exterior surface of the back waist section (Figures 11 and 12; column 8, lines 3 – 13). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place two refastening surfaces on the body-contacting surface of the front waist

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section and two refastening surfaces on the exterior surface of the back waist section since it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section, including placement as discussed above.

Regarding Claims 7 and 20, Schmitz disclose prior to cutting of the web, portions of the web which form adjacent pre-forms are joined to each other by the back waist section of one pre-form and the front waist section of the adjacent pre-form (Figure 24; column 14, lines 1 – 32).

3. Claims 4, 8, and 15 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz and Widlund et al. as applied in Claims 3 and 14 above, in view of Fletcher et al. (PCT US99 29704).

Regarding Claim 4, Schmitz and Widlund et al. disclose all the limitations of Claim 3, but do not specifically disclose two of the refastening surfaces are located on the exterior surface of the front waist section and two of the refastening surfaces are located on the body-contacting surface of the back waist section. However, Fletcher et al. disclose the above configuration (Figures 2 and 3; page 20, line 22 – page 21, line 6). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place the refastening surfaces in a number of configurations along the waist section, including placement as discussed above.

Regarding Claim 8, Widlund et al. disclose a step of folding inward a portion of the longitudinal edge of a waist section prior to jointly rotating the gripping means (Figure 12). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to fold inward a portion of the longitudinal edge of the front waist section, as disclosed by the fastener configuration of Fletcher et al., prior to jointly rotating the gripping means so that

the front and rear side parts thereof are placed edge-to-edge, and the coacting parts (37,38) are pressed firmly against one another (column 8, lines 14 – 27).

Regarding Claims 15 and 16, Fletcher et al. disclose mating hook material (82 and 83) located on the exterior surface of the front waist section, and the areas of loop material (84 and 85) located on the body-contacting surface of the back waist section (Figures 2 and 3; page 20, lines 6 – 21) and disclose mating loop material (82 and 83) located on the exterior surface of the front waist section, and the areas of hook material (84 and 85) located on the body-contacting surface of the back waist section (page 23, lines 9 – 15). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place the hook and loop materials on either the exterior front waist section or the body-contacting back waist section since it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section as alternative and equivalent embodiments.

Regarding Claims 17 and 18, Widlund et al. disclose the configuration of fasteners located on the body-contacting surface of the front waist section and fasteners located on the exterior surface of the back waist section (Figures 11 and 12) as discussed above. Fletcher et al. disclose locating the hook material and loop material irrespective of the location of the fasteners (i.e. either two loop in the front waist section and two hook in the back waist section or two hook in the front waist section and two loop in the back waist section). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place the hook and loop materials on either the body-contacting front waist section or the exterior back waist section since it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section as alternative and equivalent embodiments.

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4. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz and Widlund et al. as applied in Claims 3 and 14 above, in view of Roessler et al. (U.S. Patent No. 5399219).

Schmitz and Widlund et al. disclose all the limitations of Claim 3, but do not disclose prior to cutting of the web, portions of the web which form adjacent pre-forms are joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form. However, Roessler et al. disclose this design (Figure 11; column 24, lines 31 – 47). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to design the web to include adjacent pre-forms joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form since this is a well-known and conventional design of a web for making garments as claimed.

5. Claims 9, 10, and 21 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz and Widlund et al. as applied in Claims 3 and 14 above, in view of Johansson et al. (GB 2303045).

Regarding Claims 9, 21, and 22, Schmitz and Widlund et al. disclose all the limitations of Claim 3, but do not disclose two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces are located on the body-contacting surface of the back waist section comprising both hook and loop material. However, Johansson et al. disclose two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces located on the body-contacting surface of the back waist section comprising both hook and loop material (Figures 4 and 5; page

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17, line 24 – page 18, line 20). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces are located on the body-contacting surface of the back waist section comprising both hook and loop material to avoid peeling forces and for a simplified manufacturing process (page 17, line 33 – page 18, line 5).

Regarding Claims 10 and 23, Widlund et al. disclose a step of folding inward toward the exterior surface of the pre-form a joined superimposed refastening surfaces and bonding the joined superimposed refastening surfaces to the exterior surface of the pre-form (Figure 5A; column 3, line 66 – column 4, line 11). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to fold inward toward the exterior surface of the pre-form a joined superimposed refastening surface and bond the joined superimposed refastening surfaces to the exterior surface of the pre-form so that the abutted fasteners are not sticking out of the diaper, thereby allowing the fasteners to lay flat against the diaper.

Response to Arguments

6. The patents of Schmitz and Widlund et al. are considered compatible since they both address methods of manufacturing pants-type diapers. Although the specific methods are different, one in the art would be motivated to precondition a web to include hook and loop refastening surfaces before cutting as disclosed by Widlund et al., since by disclosing this feature, Widlund et al. show it is well known in the art to do so. Furthermore, one would also be

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motivated to precondition the web as an alternative to placing the hook and loop refastening surfaces after cutting.

7. With respect to Claim 8, Examiner agrees neither Widlund or Fletcher disclose jointly rotating a gripping means. However, the Office Action addressed the jointly rotating gripping means as being disclosed by Schmitz in Claims 1, 11, and 12. Claim 8 specifically discusses the limitation of a step of folding inward a portion of the longitudinal edge of a waist section, which Widlund discloses.

8. In response to applicant's arguments that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

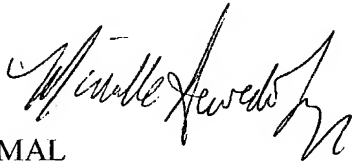
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle A Lazor whose telephone number is 571-272-1232. The examiner can normally be reached on Mon - Wed 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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